

***Effective 5/12/2015***

**49-11-601 Payment of employer contributions -- Penalties for failure to comply -- Adjustments to be made.**

- (1) The employer contributions, fees, premium taxes, contribution adjustments, and other required payments shall be paid to the office by the participating employer as determined by the executive director.
- (2) A participating employer that fails to withhold the amount of any member contributions, as soon as administratively possible, shall also pay the member contributions to the office out of its own funds.
- (3) Except as limited by Subsections (6) and (7), if a participating employer does not make the contributions required by this title within 30 days of the end of the pay period, the participating employer is liable to the office as provided in Section 49-11-604 for:
  - (a) delinquent contributions;
  - (b) interest on the delinquent contributions as calculated under Section 49-11-503; and
  - (c) a penalty equal to the greater of:
    - (i) \$250; or
    - (ii) 50% of the total contributions for the employees for the period of the reporting error.
- (4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.
- (5) Contributions made in error will be refunded to the participating employer or member that made the contributions.
- (6)
  - (a) An employer described in Subsection 49-12-202(2)(c) or (d), or Subsection 49-13-202(2)(c), (d), or (e) that paid retirement benefits to an employee or retiree that were not required by this title may offer the retirement benefits paid to the employee as a substantial substitute to service credit and retirement benefits that may have been earned by the employee under this title.
  - (b) An employee who received retirement benefits under Subsection (6)(a) may sign an affidavit that:
    - (i) acknowledges the substantial substitute received by the employee under Subsection (6)(a); and
    - (ii) irrevocably relinquishes service credit and retirement benefits that may have accrued to the employee under this title effective from the employee's date of employment with the employer described in Subsection (6)(a) to the date of the employer's election under Section 49-12-202 or 49-13-202.
  - (c) Nothing in this section shall be construed to diminish an employer's right to recover past retirement benefits other than Social Security, paid to an employee or retiree, in error or under mistaken belief that the employer was not a participating employer.
- (7) If the employer files with the office an irrevocable written relinquishment of service credit signed by the member or retiree:
  - (a) the office shall proportionally reduce any delinquent contributions, penalties, fees, or interest assessed against a participating employer in connection with a member or retiree described in Subsection (6)(a); and
  - (b) the system has no liability to the employee for benefits relinquished under Subsection (6)(b).

Amended by Chapter 243, 2015 General Session